



House of Representatives

General Assembly

File No. 525

January Session, 2007

Substitute House Bill No. 7125

House of Representatives, April 17, 2007

The Committee on Planning and Development reported through REP. FELTMAN of the 6th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING UNDERGROUND STORAGE TANKS,
DEMONSTRATION PROJECTS, AQUACULTURE STRUCTURES AND
SAND REMOVAL.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-449o of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective July 1, 2007*):

3 (a) As used in this section:

4 (1) "Double-walled underground storage tank" means an
5 underground storage tank that is listed by Underwriters Laboratories,
6 Incorporated and that is constructed using two complete shells to
7 provide both primary and secondary containment, and having a
8 continuous three-hundred-sixty degree interstitial space between the
9 two shells which interstitial space shall be continuously monitored
10 using inert gas or liquid, vacuum monitoring, electronic monitoring,
11 mechanical monitoring or any other monitoring method approved in

12 writing by the commissioner before being installed or used;

13 (2) "Double-walled underground storage tank system" means one or
14 more double-walled underground storage tanks connected by double-
15 walled piping and utilizing double-walled piping to connect the
16 underground storage tank to any associated equipment;

17 (3) "Hazardous substance" means a substance defined in Section
18 101(14) of the Comprehensive Environmental Response,
19 Compensation and Liability Act of 1980, but does not include any
20 substance regulated as a hazardous waste under subsection (c) of
21 section 22a-449 or any mixture of such substances and petroleum;

22 (4) "Petroleum" means crude oil, crude oil fractions and refined
23 petroleum fractions, including gasoline, kerosene, heating oils and
24 diesel fuels;

25 (5) "Underground storage tank" means a tank or combination of
26 tanks, including underground pipes connected thereto, used to contain
27 an accumulation of petroleum or hazardous substances, whose volume
28 is ten per cent or more beneath the surface of the ground, including the
29 volume of underground pipes connected thereto; and

30 (6) "Underground storage tank system" means an underground
31 storage tank and any associated ancillary equipment and containment
32 system, including, but not limited to, satellite piping, containment
33 sumps, dispensers and dispenser pans or other comparable
34 underdispenser spill containment.

35 (b) No person or municipality shall install, on or after October 1,
36 2003, an underground storage tank system and no person or
37 municipality shall operate or use, an underground storage tank system
38 installed after October 1, 2003, unless such underground storage tank
39 system is a double-walled underground storage tank system. This
40 section shall not apply to a residential underground storage tank
41 system, as defined in section 22a-449a. On or after January 1, 2008, no
42 person or municipality shall install an underground storage tank

43 system, or operate or use an underground storage tank system
44 installed after January 1, 2008, unless such underground storage tank
45 system is equipped with liquid-tight and vapor-tight sumps with
46 electronic leak detectors and dispenser pans or other comparable
47 underdispenser spill containment with electronic leak detectors. No
48 person or municipality shall have an underground storage tank
49 system's containment sump, dispenser or underdispenser spill
50 containment repaired on or after January 1, 2008, to restore said
51 components to operating condition without equipping said
52 underground storage tank system with liquid-tight and vapor-tight
53 sumps with electronic leak detectors and dispenser pans or other
54 comparable underdispenser spill containment with electronic leak
55 detectors.

56 Sec. 2. (NEW) (*Effective October 1, 2007*) The Commissioner of
57 Environmental Protection may issue a license for a demonstration
58 project for any activity regulated by the commissioner under chapter
59 446d of the general statutes provided the commissioner determines
60 that such demonstration project (1) is necessary to research, develop or
61 promote methods and technologies of solid waste management which
62 are consistent with the goals of the state solid waste management plan;
63 (2) does not pose a significant risk to human health or the
64 environment; and (3) is not inconsistent with the federal Water
65 Pollution Control Act, the federal Rivers and Harbors Act, the federal
66 Clean Air Act or the federal Resource Conservation and Recovery Act.
67 An application for such license shall be on a form prescribed by the
68 commissioner, accompanied by a fee of one thousand dollars and shall
69 provide such information as the commissioner deems necessary. Any
70 person applying for such license shall not commence the project prior
71 to the commissioner's written approval. The commissioner may
72 impose conditions upon such license as deemed necessary to
73 adequately protect human health and the environment or to ensure
74 project success and shall be valid for a period of not more than two
75 years. The commissioner may renew such license provided the total
76 period of licensure does not exceed five years. The commissioner may
77 order summary suspension of any such license in accordance with

78 subsection (c) of section 4-182 of the general statutes. Notwithstanding
79 the renewal process, any person may seek, or the commissioner may
80 require, that the project be sanctioned under a permit pursuant to
81 chapter 446d of the general statutes.

82 Sec. 3. Subdivision (1) of subsection (a) of section 22a-471 of the
83 general statutes is repealed and the following is substituted in lieu
84 thereof (*Effective from passage*):

85 (a) (1) If the commissioner determines that pollution of the
86 groundwaters has occurred or can reasonably be expected to occur and
87 the Commissioner of Public Health determines that the extent of
88 pollution creates or can reasonably be expected to create an
89 unacceptable risk of injury to the health or safety of persons using such
90 groundwaters as a public or private source of water for drinking or
91 other personal or domestic uses, the Commissioner of Environmental
92 Protection shall, as funds from the emergency spill response account
93 established by section 22a-451 allow, arrange for the short-term
94 provision of potable drinking water to those residential buildings and
95 elementary and secondary schools affected by such pollution, or at the
96 commissioner's discretion, to health care, child care or elder care
97 facilities or institutions affected by such pollution until either [he] the
98 commissioner issues an order pursuant to this section requiring the
99 provision of such short-term supply and the recipient complies with
100 such order or a long-term supply of potable drinking water has been
101 provided, whichever is earlier. In determining if pollution creates an
102 unacceptable risk of injury, the Commissioner of Public Health shall
103 balance all relevant and substantive facts and inferences and shall not
104 be limited to a consideration of available statistical analysis but shall
105 consider all of the evidence presented and any factor related to human
106 health risks. The commissioner may issue an order to the person or
107 municipality responsible for such pollution requiring that potable
108 drinking water be provided to all persons affected by such pollution. If
109 the commissioner finds that more than one person or municipality is
110 responsible for such pollution, [he] the commissioner shall attempt to
111 apportion responsibility if [he] the commissioner determines that

112 apportionment is appropriate. If [he] the commissioner does not
113 apportion responsibility, all persons and municipalities responsible for
114 the pollution of the groundwaters shall be jointly and severally
115 responsible for the providing of potable drinking water to persons
116 affected by such pollution. If the commissioner determines that the
117 state or an agency or department of the state is responsible in whole or
118 in part for the pollution of the groundwaters, such agency or
119 department shall prepare or arrange for the preparation of an
120 engineering report and shall provide or arrange for the provision of a
121 long-term potable drinking water supply. If the commissioner is
122 unable to determine the person or municipality responsible or [if he]
123 determines that the responsible persons have no assets other than land,
124 buildings, business machinery or livestock and are unable to secure a
125 loan at a reasonable rate of interest to provide potable drinking water,
126 [he] the commissioner may prepare or arrange for the preparation of
127 an engineering report and provide or arrange for the provision of a
128 long-term potable drinking water supply or [he] may issue an order to
129 the municipality wherein groundwaters unusable for potable drinking
130 water are located requiring that short-term provision of potable
131 drinking water be made to those existing residential buildings and
132 elementary and secondary schools affected by such pollution, or at the
133 commissioner's discretion, to health care, child care or elder care
134 facilities or institutions affected by such pollution and that long-term
135 provision of potable drinking water be made to all persons affected by
136 such pollution. For purposes of this section, "residential building"
137 means any house, apartment, trailer, mobile manufactured home or
138 other structure occupied by individuals as a dwelling, except a non-
139 owner-occupied hotel or motel or a correctional institution.

140 Sec. 4. Subsection (d) of section 22a-361 of the general statutes is
141 repealed and the following is substituted in lieu thereof (*Effective*
142 *October 1, 2007*):

143 (d) (1) The Commissioner of Environmental Protection may issue a
144 general permit for any minor activity regulated under sections 22a-28
145 to 22a-35, inclusive, or sections 22a-359 to 22a-363f, inclusive, if the

146 commissioner determines that such activity would (A) cause minimal
147 environmental effects when conducted separately, (B) cause only
148 minimal cumulative environmental effects, (C) not be inconsistent with
149 the considerations and the public policy set forth in sections 22a-28 to
150 22a-35, inclusive, and section 22a-359, as applicable, (D) be consistent
151 with the policies of the Coastal Management Act, and (E) constitute an
152 acceptable encroachment into public lands and waters. Such activities
153 may include routine minor maintenance and routine minor repair of
154 existing structures, fill, obstructions, encroachments or excavations;
155 substantial maintenance consisting of rebuilding, reconstructing or
156 reestablishing to a preexisting condition and dimension any structure,
157 fill, obstruction, encroachment or excavation; maintenance dredging of
158 areas which have been dredged and continuously maintained as
159 serviceable; activities allowed pursuant to a perimeter permit; the
160 removal of structures, derelict vessels, debris, rubbish or similar
161 discarded material or unauthorized fill material; minor alterations or
162 amendments to authorized activities consistent with the authorization
163 for such activities; activities which have been required or allowed by
164 an order of the commissioner; open water marsh management by or
165 under the supervision of the Department of Public Health or
166 Department of Environmental Protection; conservation activities of or
167 under the supervision or direction of the Department of
168 Environmental Protection; construction of individual residential docks
169 which do not create littoral or riparian conflicts, navigational
170 interference, or adverse impacts to coastal resources as defined by
171 section 22a-93, which are not located in tidal wetlands as defined by
172 section 22a-29 and which extend no further than forty feet waterward
173 of mean high water or to a depth of minus four feet mean low water,
174 whichever point is more landward; installation of scientific measuring
175 or monitoring devices; survey activities including excavation of test
176 pits and core sampling and driving of test pilings; construction of
177 utility lines; aquacultural activities; and installation and removal of
178 small seasonal structures including floats and moorings. Any person
179 conducting an activity for which a general permit has been issued shall
180 not be required to obtain an individual permit or certificate under any

181 other provision of sections 22a-28 to 22a-35, inclusive, or sections 22a-
182 359 to 22a-363f, inclusive, for that activity except as provided in
183 subdivision (3) of this subsection. A general permit shall clearly define
184 the activity covered thereby and may include such conditions and
185 requirements as the commissioner deems appropriate, including, but
186 not limited to, construction timing, methodologies and durations,
187 resource protection practices, management practices, and verification
188 and reporting requirements. The general permit may require any
189 person proposing to conduct any activity under the general permit to
190 register such activity, including obtaining approval from the
191 commissioner, before the general permit becomes effective as to such
192 activity. Registrations and applications for approval under the general
193 permit shall be submitted on forms prescribed by the commissioner.
194 Any approval by the commissioner under a general permit may
195 include conditions specific to the proposed activity to ensure
196 consistency with the requirements for issuance of the general permit.
197 The commissioner shall prepare, and annually amend, a list of holders
198 of general permits under this section, which list shall be made
199 available to the public.

200 (2) Notwithstanding any other procedures specified in sections 22a-
201 28 to 22a-35, inclusive, and sections 22a-359 to 22a-363f, inclusive, any
202 regulations adopted thereunder, and chapter 54, the commissioner
203 may issue a general permit in accordance with the following
204 procedures: (A) The commissioner shall publish in a newspaper
205 having a substantial circulation in the affected area or areas notice of
206 intent to issue a general permit; (B) the commissioner shall allow a
207 comment period of thirty days following publication of such notice
208 during which interested persons may submit written comments
209 concerning the permit to the commissioner and the commissioner shall
210 hold a public hearing if, within said comment period, he receives a
211 petition signed by at least twenty-five persons; (C) the commissioner
212 may not issue the general permit until after the comment period; (D)
213 the commissioner shall publish notice of any permit issued in a
214 newspaper having substantial circulation in the affected area or areas;
215 and (E) summary suspension may be ordered in accordance with

216 subsection (c) of section 4-182. Any person may request that the
217 commissioner issue, modify or revoke a general permit in accordance
218 with this subsection.

219 (3) Subsequent to the issuance of a general permit, the commissioner
220 may require any person whose activity is or may be covered by the
221 general permit to apply for and obtain an individual permit or
222 certificate under the provisions of sections 22a-28 to 22a-35, inclusive,
223 or sections 22a-359 to 22a-363f, inclusive, for all or any portion of the
224 activities covered by the general permit, if the commissioner
225 determines that an individual permit is necessary to assure consistency
226 with purposes and policies of such sections, and the Coastal
227 Management Act. The commissioner may require an individual permit
228 under this subdivision in cases including, but not limited to, the
229 following: (A) The permittee is not in compliance with the conditions
230 of the general permit; (B) an individual permit or certificate is
231 appropriate because of circumstances specific to the site; (C)
232 circumstances have changed since the time the general permit was
233 issued so that the permitted activity is no longer acceptable under the
234 general permit; or (D) a change has occurred in relevant law. The
235 commissioner may require an individual permit or certificate under
236 this section only if the affected person has been notified in writing that
237 an individual permit or certificate is required. The notice shall include
238 a brief statement of the reasons for the decision.

239 (4) The commissioner may adopt regulations, in accordance with the
240 provisions of chapter 54, to carry out the purposes of this section.

241 [(5) Notwithstanding any provision of sections 22a-359 to 22a-363f,
242 inclusive, pending issuance of a general permit for aquaculture
243 activities by the commissioner in accordance with this section, no
244 permit or certificate shall be required for the placement, maintenance
245 or removal of (A) individual structures used for aquaculture, as
246 defined in section 22-416, including, but not limited to, cages or bags,
247 which are located on designated state or municipal shellfish beds
248 which structures create no adverse impacts on coastal resources or

249 navigation over their location or (B) any buoys used to mark such
 250 structures. Upon issuance of a general permit for aquaculture activities
 251 in accordance with this section, any aquaculture activities shall comply
 252 with the terms of such general permit or other applicable provisions of
 253 sections 22a-359 to 22a-363f, inclusive.]

254 Sec. 5. Subsection (e) of section 22a-361 of the general statutes is
 255 repealed and the following is substituted in lieu thereof (*Effective*
 256 *October 1, 2007*):

257 (e) No person, firm or corporation, public, municipal or private,
 258 who removes sand, gravel or other material lying waterward of the
 259 mean high water mark of the tidal, coastal or navigable waters of the
 260 state pursuant to a permit issued under this section on or after October
 261 1, 1996, shall make any beneficial or commercial use of such sand,
 262 gravel or other material except upon payment to the state of a fee of
 263 four dollars per cubic yard of such sand, gravel and other materials
 264 unless otherwise exempted from payment under this section. Such
 265 payment shall be made at times and under conditions specified by the
 266 commissioner in such permit. No fee shall be assessed for (1) the
 267 performance of such activities on land which is not owned by the state,
 268 (2) the use of sand, gravel or other materials for beach restoration
 269 projects, or (3) ultimate disposal of such sand, gravel or other materials
 270 which does not result in an economic benefit to any person, and the
 271 commissioner may waive the fee for the beneficial or commercial use
 272 of sand, gravel or other materials that have been decontaminated or
 273 processed to meet applicable environmental standards for reuse. For
 274 the purposes of this section, "beneficial or commercial use" includes,
 275 but is not limited to, sale or use of sand, gravel or other materials for
 276 construction, aggregate, fill or landscaping.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2007</i>	22a-449o
Sec. 2	<i>October 1, 2007</i>	New section
Sec. 3	<i>from passage</i>	22a-471(a)(1)

Sec. 4	<i>October 1, 2007</i>	22a-361(d)
Sec. 5	<i>October 1, 2007</i>	22a-361(e)

PD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Department of Environmental Protection	Various - None	See Below	See Below
Department of Agriculture	GF - None	See Below	See Below

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 08 \$	FY 09 \$
Various Municipalities	Cost	Potential Minimal	Potential Minimal

Explanation

The bill modifies what is included in the new requirements and definitions for installation of commercial underground storage tank systems. It is anticipated that any municipality that would need to install and maintain a new system would incur costs of approximately \$2,000. However, the potential costs would be minor compared to any potential remediation costs that might be incurred due to lack of upgrading a system.

It is anticipated that any workload increase or costs incurred to the Department of Environmental Protection (DEP) due to the issuance of a license for a demonstration project will be offset by the required fee which would be deposited into the Environmental Quality Fund.

Expanding the Commissioner of the DEP's authority to provide for short term potable water to health care, child care or elder care institutions or facilities potentially expands the use of the Emergency Spill Response account and is not anticipated to have a significant impact to the account. The account is funded by a portion of the petroleum products gross earnings tax. The Governor's recommended

budget, HB 7077 provides that for the fiscal year, ending June 30, 2008 and the fiscal year ending June 30, 2009, the sum of \$12,500,000 be deposited into the account.

Any revenue loss due to the waiver of the sand and gravel fee by the DEP is anticipated to be minimal based on current practice.

Repealing the law exempting the placement, maintenance or removal of certain aquaculture structures and marking buoys from DEP permit or certificates, pending issuance of general permits will clarify procedure and eliminate a conflicting process. The Department of Agriculture regulates these structures and buoys under another statute.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 7125*****AN ACT CONCERNING UNDERGROUND STORAGE TANKS,
DEMONSTRATION PROJECTS, AQUACULTURE STRUCTURES
AND SAND REMOVAL.*****SUMMARY:**

This bill (1) expands the authority of the Department of Environmental Protection's (DEP) Authority by allowing it to temporarily provide potable water to health, child, and elder care facilities whose drinking water is polluted; (2) tightens requirements for the installation, repair, and operation of commercial underground storage tanks; (3) authorizes DEP to license solid waste demonstration projects; and (4) makes other changes.

EFFECTIVE DATE: October 1, 2007, except for the provision concerning potable drinking water, which takes effect upon passage, and the underground storage tank provisions, which take effect July 1, 2007.

PROVISION OF POTABLE DRINKING WATER

Under current law, the DEP commissioner may arrange for the provision of potable water to homes and schools affected by groundwater pollution as funds from the emergency spill response account allow. The bill allows the commissioner to also provide potable water to health care, child care, or elder care facilities or institutions affected by such pollution. As under existing law, she may provide the water until (1) she issues an order requiring the provision of a short-term supply, and the recipient of the order complies; or (2) a long-term water supply is established.

By law, the commissioner may order a municipality to temporarily provide potable water to homes and schools if (1) the person or

municipality responsible for groundwater pollution is not known or (2) the responsible party is financially unable to provide potable water. The bill authorizes the commissioner in such cases to also order a municipality to provide potable water to health care, child care, or elder care facilities or institutions affected by the pollution.

UNDERGROUND STORAGE TANKS

Starting January 1, 2008, the bill (1) bars people, firms, or municipalities from installing or operating commercial underground storage tank systems unless they are equipped with liquid-tight and vapor-tight sumps with electronic leak detectors and dispenser pans, or other comparable underdispenser spill containment with electronic leak detectors and (2) requires people or municipalities repairing a system's containment sump, dispenser, or underdispenser to its operating condition to install such equipment.

By law, an underground storage tank system comprises the tank and any associated ancillary equipment and containment system. The bill specifies that associated equipment and system includes satellite piping, containment sumps, dispensers, and dispenser pans or other comparable underdispenser spill containment.

SOLID WASTE DEMONSTRATION PROJECTS

The bill allows the commissioner to issue a license for a solid waste demonstration project upon finding it (1) is necessary to research, develop, or promote methods and technologies of solid waste management consistent with the goals of the state's solid waste management plan; (2) does not pose a significant human health or environmental risk; and (3) is not inconsistent with the federal Water Pollution Control, Rivers and Harbors, Clean Air, or Resource Conservation and Recovery acts.

License applicants must (1) apply on a form the commissioner prescribes, (2) provide the information the commissioner deems necessary, and (3) pay a \$1,000 application fee. They cannot start the project until they get the commissioner's written approval.

The commissioner may impose conditions to protect human health and the environment or to ensure a project's success. A license is valid for two years, but the commissioner may renew it, apparently for an additional three years. The commissioner may suspend the license according to law. Under the bill, anyone may seek, or the commissioner may require, that a demonstration project also obtain a solid waste permit.

AQUACULTURE PERMITS

The bill repeals a law exempting the placement, maintenance, or removal of certain aquaculture structures and marking buoys from DEP permit or certificate requirements, pending issuance of a general permit. The Agriculture Department regulates these structures and buoys under another law unaffected by this bill.

SAND AND GRAVEL

By law, anyone who removes sand, gravel, or other material waterward of the mean high water mark of the state's tidal, coastal, or navigable waters for sale or use in construction, aggregate, fill, or landscaping must pay the state \$4 per cubic yard. The bill allows the commissioner to waive the fee if the sand, gravel, or other material used for such purposes has been decontaminated or processed to meet applicable environmental standards for reuse.

BACKGROUND

Agriculture Shellfish Permitting

By law, the Agriculture Department has exclusive authority to grant or deny aquaculture permits, except in matters specifically concerning water discharges from aquaculture operations, which require DEP approval.

Federal Environmental Laws

The Water Pollution Control, Rivers and Harbors, Clean Air, and Resource Conservation and Recovery acts regulate the discharge of pollutants; the construction of bridges, dams, and dikes; air pollution; and waste management, respectively.

Legislative History

The House referred the bill (File 173) to the Planning and Development Committee, which reported the substitute eliminating a provision barring municipalities from assigning the duties of an inland wetland agency to planning, zoning, or planning and zoning commissions.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 22 Nay 7 (03/12/2007)

Planning and Development Committee

Joint Favorable Substitute

Yea 18 Nay 0 (04/04/2007)